

# Communications Daily

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## TODAY'S NEWS

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### SPECTRUM BILL FALLS SHORT

of meeting NBP goal of 500 MHz for wireless broadband. As little as 60 MHz of TV spectrum may get auctioned, and that won't be a slam dunk. (P. 4)

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## Congress Clears Public Safety Network, Voluntary Incentive Auctions

The House and Senate passed long-awaited spectrum legislation on Friday as a "pay-for" in the payroll tax cut extension bill. President Barack Obama praised the bill and was expected to sign it into law. The spectrum law (CD Feb 17 p1) authorizes the FCC to conduct voluntary incentive auctions, a recommendation from 2010's National Broadband Plan. It also sets up national public safety wireless broadband network ten years after one was recommended by the 9/11 Commission.

The Senate voted 60-32 to approve the conference report on the payroll extension. Less than an hour earlier, the House had agreed 293 to 132. The payroll bill's spectrum provisions were praised by Democrat and GOP leaders of the House Commerce Committee and Communications Subcommittee in floor statements before the House vote. Senate Commerce Committee leaders split on the conference report. Commerce Committee Chairman Jay Rockefeller, D-W.Va., and Communications Subcommittee Chairman John Kerry, D-Mass., voted yes. Their ranking members Kay Bailey Hutchison, R-Texas, and Jim DeMint, R-S.C., voted no. Hutchison co-sponsored the Senate spectrum bill S-911 and her objections to the payroll bill were unrelated to spectrum, a Senate GOP aide said.

Spectrum auctions ordered by the bill should raise more than \$15 billion over the next ten years, the Congressional Budget Office said Thursday. The auctions will raise \$8 billion in the first five years, CBO said.

The U.S. fulfilled an "overdue" 9/11 promise to public safety, Vice President Joe Biden said Friday. "First responders put their lives on the line to protect us every day, and the least we can do is ensure that they have the dedicated bandwidth they need to

communicate with each other,” Biden said. “It’s going to save lives and help keep our neighborhoods safe.” President Barack Obama also praised the spectrum provisions in the payroll bill. “It includes a critical element in the plan I outlined in the State of the Union to out-innovate the rest of the world by unleashing mobile broadband, investing in innovation, and building a nationwide public safety network,” he said Thursday night.

The spectrum deal was a “huge win,” House Commerce Committee Chairman Fred Upton, R-Mich., said in a floor statement before the House vote. While full committee Ranking Member Henry Waxman, D-Calif., objected to some aspects of the broader payroll bill, he said he had no “similar reservations” about spectrum provisions. Communications Subcommittee Chairman Greg Walden, R-Ore., said his only complaint was that the governance provision was “not exactly” what he wanted. Ranking Member Anna Eshoo, D-Calif., said the spectrum provisions will help the U.S. to “lead the world.”

“We struck a fine balance to make more efficient use of the airwaves while also providing necessary protections for broadcasters,” said a joint statement by Upton and Walden. Upton and Walden applauded the bill’s auction eligibility rules, saying it would prevent the FCC from picking winners and losers. “We will be watching closely, ensuring the FCC follows the law,” they said.

House Homeland Security Committee Chairman Peter King, R-N.Y., applauded the bill for reallocating the 700 MHz D-block to public safety and providing enough funding to construct and maintain the network. “These important public safety provisions will be of tremendous assistance to our nation’s first responders as they carry out their critical mission of protecting and saving lives here in the homeland,” King said.

FCC Chairman Julius Genachowski was “pleased that Congress has recognized the vital importance of freeing up more spectrum for mobile broadband, both licensed and unlicensed, although the legislation could limit the FCC’s ability to maximize the amount and benefits of recovered spectrum,” Genachowski said Thursday. “The legislation also includes key provisions on public safety, laying the groundwork for a much-needed nationwide public safety broadband network, and advancing the deployment of Next Generation 9-1-1.”

The spectrum language received less love from former FCC Chairman Reed Hundt. “By insisting on changing the admirable spectrum auction authority granted the FCC in 1993, this Congress has put a stick in a spoke in the wheel of the wireless industry,” Hundt said. “Hopefully, the FCC can somehow transcend this needless interference and continue to offer plenty of spectrum to all firms so that we can see robust, unregulated, innovative competition in the American wireless industry.”

Many industry associations supported the spectrum provisions, even with the compromises stuck by House and Senate legislators. “Passing incentive auctions is a win for everyone — government, business and individuals,” said Information Technology Industry Council CEO Dean Garfield. Congress’s vote Friday “represents an important step toward meeting the industry’s spectrum needs,” said CTIA President Steve Largent, representing the wireless industry. NAB, representing broadcasters, praised the bill on Thursday.

“It’s a tremendous step forward,” TIA President Grant Seiffert said in an interview Friday. “We have been caught in a political cycle here with the election. I think everyone is very excited that we now have certainty in the marketplace, at least a step forward to a more certain market. There’s still going to

be a lot of work, but industry is ready to engage and take on the challenge, and the consumers win ultimately." Incentive auctions present many complicated questions, Seiffert said. "There are major decisions to be made, choices to be made," he said. "Different stakeholders are going to all position themselves and fight for their current turf or new turf. This is not going to be easy by any means."

Rural Cellular Association President Steve Berry was pleased that under the legislation the FCC would retain the ability to impose auction rules restricting who could participate in incentive auctions. "Inclusion of this language is a huge win for the competitive marketplace, and it is clear Congress has recognized the important role of getting additional spectrum to the market through the FCC in ways that support competitive policies," Berry said. Berry told us Friday the final language in the legislation "makes clear the FCC can fashion successful auctions that promote competitive policies — every consumer will benefit and it is a win for competitive carriers." The language is "unambiguous," he said. "Congress supports the idea that competitive policies are a priority for the FCC when designing future auctions."

"This legislation doesn't solve the spectrum crunch, but it's clearly a step in the right direction," said Wireless Broadband Coalition Executive Director David Taylor. Voluntary incentive auctions will provide "the wireless industry access to spectrum needed to meet consumer demand for robust wireless broadband services," he said. "The auctions will stimulate billions in private sector capital investment and create over 300,000 jobs."

Sascha Meinrath, director of the New America Foundation's Open Technology Initiative, was sharply critical of the legislation. "Congress is poised to both undermine the utility of unused television spectrum

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for unlicensed use while simultaneously creating a labyrinthine process for auctioning these bands that is unlikely to achieve its stated purposes and certainly won't be implemented for years and years to come," Meinrath said Friday. "At the very least, if Congress were serious about deficit reduction, they shouldn't be spending auction revenues years before they're likely to even come in — especially when there are real questions about whether the amount they claim they're going to raise is, in fact, correct."

Public Knowledge Legal Director Harold Feld said in a blog Friday that public interest groups scored a number of key wins late in the process as the bill was being developed (<http://xrl.us/bmskyp>). Congress did away with a proposed provision prohibiting net neutrality conditions in future auctions and preserved the use of the TV white spaces for "Super Wi-Fi," he said. On FCC auction authority, "We got a partial win," Feld said. "The law does take away the FCC's ability to prevent anybody who meets the financial, technical, and character rules from participating in 'any system of competitive bidding.' But it includes a clause that the FCC can still make 'rules of general applicability, including rules concerning spectrum aggregation that promote competition.'" — **Adam Bender, Howard Buskirk**

**'Missing Centerpiece'**

**Spectrum Bill Said to Provide Only Partial Fix for Industry's Growing Needs**

The spectrum provisions in the payroll tax extension will only get the Obama administration part of the way toward finding 500 MHz for wireless broadband. The legislation won't free up nearly as much spectrum as expected, industry and government officials said. The FCC National Broadband Plan projected that voluntary incentive auctions of broadcast spectrum would yield 120 MHz for broadband. That

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figure appears now to be down to 60-80 MHz, with a big chunk of the 120 MHz lost in part because of language sought by the NAB protecting TV station signals along the Canadian and Mexican borders, industry and government officials said.

Gone too from the legislation is language in the House spectrum bill that would have required real-locating the 1755-1780 MHz band for auction. The band has long been a key target of wireless carriers. The Department of Defense had asked that the band be taken out of the legislation on the grounds that too many unknowns remain, carrier officials said. Gone too is language advocating the reallocation of the 3550-3650 MHz band. Unlike the broadcast spectrum, the FCC did not need approval from Congress to reallocate these bands.

The legislation is "missing its centerpiece," said Paul Gallant, analyst at Guggenheim Securities. "It appears the wireless industry was unsuccessful in persuading Congress to relocate federal agency users from the 1755-1780 MHz band. Carriers lobbied hard to pair that 25 MHz with the vacant 25 MHz at 2155-2180 MHz for a 50 MHz block of spectrum, which would have been the prime piece of non-broadcast spectrum to be auctioned. So creation of that 50 MHz block now appears off the table."

"The broadband plan called for 500 MHz, so let's add up what we've got so far," said a government official. "We don't really know. We won't know for years." The "other unknown is what is the spectrum band going to look like," said another government official. "Is a nationwide swatch achievable? It depends on what the broadcasters decide to do. ... Everybody is familiar with the phrase don't let the perfect get in the way of the good. It's not clear how good this is."

The spectrum bill is less than meets the eye, said Information Technology Innovation Foundation Senior Fellow Richard Bennett. "The spectrum auction legislation fails to deliver an adequate amount of spectrum," he said. "This is a the result of classic interest group politics: Defense is hanging on to spectrum they don't need, TV is hanging on to spectrum they don't deserve, and we still don't have a rational concept for unlicensed. So instead of the 120 MHz that the incentive auction was supposed to deliver in the National Broadband Plan's estimation, we'll be lucky to get 60 MHz when the auction concludes." Bennett said there's a lot of congratulations in Washington Friday "over the fine compromise that allowed incentive auctions to finally go forward," but that's only part of the story. "Half a loaf is certainly better than none," he said. "But we can't keep doing spectrum allocation this way. The set-asides for defense and broadcasting aren't defensible and we need a more rational approach to providing the greatest good to the greatest number of spectrum users."

Public Knowledge Legal Director Harold Feld said the legislation must be counted as a big win for FCC Chairman Julius Genachowski. "I'm inclined to treat the 500 MHz goal as 'aspirational' rather than something that anyone really expected," Feld said. The 500 MHz was supposed to include shared and repurposed spectrum and bands already in the pipeline, he said. "It's certainly true that we can't predict how much spectrum will ever get to market," Feld said. "But frankly, that was always a big question mark. Recall that the Senate version had a process that would have allowed the military to prevent transfer of the 1755-1780 band, and CBO was very skeptical in their score for S-911 that anyone could pry more spectrum away from DOD."

As for the 3550-3650 MHz band, "no one really thought that was good for auctioning," Feld said. "There is much more productive discussion going on about how to share this under rules similar to those being used for the 3650-3700 band. It has pretty much the same characteristics and exclusion zones."

Passage of the legislation was a positive development, said Free State Foundation President Randolph May. "It's true that existing spectrum claimants, including the Defense Department, fought hard to hold on to their spectrum entitlements," he said. "So what else is new? This is Washington, not Utopia. Nevertheless, the prospect of more spectrum becoming available for wireless is now much better with the bill adopted than without it, and the bill is better than it could have been if the FCC had been given leeway to exclude bidders." The administration "certainly needs to keep the Defense Department's feet to the fire regarding the 1755-1780 MHz band," May said.

Jeff Silva, analyst at Medley Global Advisors, expects continued pressure to locate more government spectrum for broadband. "While spectrum provisions ... may fall short of lofty policy goals envisioned by the Obama Administration, industry and other stakeholders, they nonetheless collectively represent a huge step forward in addressing commercial and public safety wireless needs going forward," he wrote. "The legislative achievement, however imperfect, simply cannot be understated in light of the increasingly bitter partisan nature of politics that's only exacerbated in a presidential-election year. ... This is about more than just wireless. This is about the future of the Internet as traffic, innovation and investment steadily migrate to mobile platforms and therefore by extension about American competitiveness on the global stage."

"Nobody thought this was going to be easy, and it hasn't been," said Media Access Project Senior Vice President Andrew Schwartzman. "As it becomes clear that the 500 MHz goal may not be reached as soon as was hoped, it places renewed focus on using existing spectrum more efficiently."

Despite the broad incentive authority given to the FCC, it may not apply to mobile satellite services S-band spectrum, which Dish Network is seeking approval to use terrestrially. While the bill doesn't specify the S-band, it does limit incentive auction authority to instances where "at least two competing licensees participate in the reverse auction." An industry executive said that provision may exclude Dish, which is in the process of buying the two S-band licensees. Still, if the FCC were intent on auctioning some of that spectrum, the agency could probably structure its approval to make sure the legislation still applies to Dish, said a communications lawyer.

Dish said it was glad the legislation passed to give "the FCC the ability to address the nation's spectrum crunch and promote competition." Dish's "pending applications and associated waiver requests, present the FCC with an immediate opportunity to advance one of its highest priorities — providing new sources of broadband competition. With these approvals, DISH would immediately begin the design and construction planning for the nation's first 100 percent LTE network, which would provide greater choice for wireless consumers." — *Howard Buskirk, Tim Warren*

### 'Old School' Technology Fight

## **Cable-CE Debate on RF Traps Intensifies Ahead of Likely FCC Encryption OK**

Debate intensified on whether cable operators should install radio frequency traps in all-digital systems so consumer electronics can get basic programming without using extra devices. NCTA Friday released a blog titled "it's a trap" against the use of such technology. Meanwhile the CE company that has been most vocal against cable operators scrambling signals took aim at RCN for saying traps aren't practical

RCN is the biggest of a handful of cable operators with encryption waivers pending at the FCC, whose Media Bureau is working on an order allowing the scrambling of broadcast-TV and other basic-cable programming (CD Feb 16 p7). Another CE company that relies on clear QAM so users can get basic cable said there may be merits in using traps to cut down on signal theft that prompted operators to pursue encryption.

The CE-cable war of words over traps isn't likely to lead the bureau to require operators use them, FCC and industry officials predicted. They said bureau staff continue working on an order to allow encryptions, and a ruling may circulate for a vote within weeks. But they said the work has been slowed by clear QAM concerns raised by Boxee — which has made seven filings on the subject this month in docket 11-169 (<http://xrl.us/bmsk76>) — and was the subject of a Feb. 9 NCTA blog. A Hauppauge Computer Works filing sought the use of traps, while the CEO of Really Simple Software said the idea ought to be considered. A bureau spokeswoman declined to comment.

NCTA called traps "an old school way of controlling authentication," in Friday's blog by Paul Rodriguez, senior director of social media strategy (<http://xrl.us/bmsk8g>). Traps date to the 1970's, Rodriguez wrote, and there are numerous "problems with using them." Technicians must visit and perhaps enter a cable subscriber's home to install or take out a trap, because "operators need to ensure that the installed traps are physically secured," he wrote. "Otherwise, someone could simply remove the trap and continue receiving an unauthorized signal." The traps can "make it difficult to re-arrange channels or launch new services, because channels that might be utilized are being physically blocked by hundreds of traps at customers' homes," Rodriguez wrote. "As RCN reported in a filing with the FCC, traps don't always work in this new world where broadband services and television programming may be pretty close in frequency."

Boxee took aim at that operator's filing (<http://xrl.us/bmr9n3>). The company, whose Boxee Live TV product uses clear QAM, said it's RCN's responsibility to install traps to prevent signal theft, since it made the "choice" not to use them. Boxee said its "position with respect to Clear QAM is no more 'of its own making'" — a phrase RCN used in a filing to say Boxee decided not to install CableCARD ports, and so its product won't work with encrypted content — "than is RCN's exposure to basic-tier 'theft' from opting not to use traps." Boxee built its Live TV to "existing standards and regulations" in "addressing a problem specifically highlighted by the National Broadband Plan" from the FCC, which said devices can't always access traditional TV shows, the company said.

The Boxee Live TV "development process began approximately a year ago, and was nearly complete" when the encryption rulemaking notice was approved in October, the company said. "Boxee was unable to predict that Clear QAM may be eliminated in such short order," it said (<http://xrl.us/bmsmac>). "All of RCN's stated concerns would be addressed if the Commission required cable operators desiring to encrypt Clear QAM to instead make available a standard encrypted IP feed of broadcast channels in a way that does not require additional hardware, rental fees or cable operator consent." The commission may examine setting a uniform standard for set-top boxes to have connections allowing home networking using a non-proprietary technology such as the Digital Living Network Alliance (DLNA), industry and commission officials said.

A DLNA proceeding would do nothing for clear QAM gear, since it can't get basic programming that's scrambled, said Really Simple Software CEO Mark Ely, who lobbied the bureau last week against encryption (<http://xrl.us/bmsmar>). The forthcoming Simple.TV product, which will ship starting in May and cost \$149 at Amazon, like other clear QAM devices has no port for a CableCARD, he told us. "When

we did the design of the product starting last year, we certainly expected that clear QAM would be an option for us, and where a good chunk of our users would get their content, since obviously not everyone gets good antenna reception," he said of terrestrial broadcasts. "We'll have to educate consumers" about encryption if the FCC allows it, which "will obviously complicate things" for the company and its customers, Ely said. "We just want to have clear QAM as an option for as long as possible, and if that no longer is an option, I don't want to have a situation where consumers are locked into only having a device provided by the cable company." Cable operator-installed traps seem to be an "interesting thing to consider, keeping clear QAM" while preventing signal theft, Ely said: "That seems like a fair thing."

Adding DLNA to set-tops shouldn't be "linked" to the encryption proceeding, Boxee said in another filing (<http://xrl.us/bmsmhf>). "While a DLNA-based interface has the potential to increase device compatibility with cable programming" and should be pursued, it doesn't "provide a remedy to the harms that would result from eliminating Clear QAM" and its "efficacy will depend on details that have not yet been shared with Boxee," the company said. Adding DLNA to set-tops "may potentially remedy some of the lost compatibility caused by encryption, but it does not explain why such compatibility should be lost in the first place," the company said in reporting on CEO Avner Ronen and other executives' discussion with Chief Bill Lake and others in the bureau's front office. It said DLNA and encryption are "distinct" issues. — *Jonathan Make*

## **TV Broadcasting**

### **Progress on the Goal of Global Harmonization for Mobile Claimed at WRC**

GENEVA — The World Radiocommunication Conference (WRC) took major steps toward global harmonization for mobile applications, including wrapping up work on issues remaining after the 2007 conference, setting up a work program on future use of the 700 MHz band and agenda items for the 2015 conference that will follow up on decisions this month and consider spectrum allocations to the mobile service to spur broadband applications, officials said during a press conference on the last day of the four-week conference.

"The GSMA is extremely pleased that many countries have recognized the need to secure the future of mobile broadband and along with our members we stand committed to the success of the ITU's work," said Anne Bouverot, GSMA director general, in a press release.

The WRC decisions on mobile broadband are a "clear message" to governments and industry of the importance of making broadband accessible to all, said Hamadoun Toure, the ITU secretary-general. There has to be enough room for broadband to grow, he said. The conference also addressed the digital dividend in the 700 MHz band "in a very elegant fashion," he said. This now provides for a great deal of harmonization for the use of the 700 MHz band by all regions that need it the most, he said.

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The conference agreement following Arab and African proposals for an allocation to mobile in the band 694 and 790 MHz was “to have this allocation for 700 MHz at this conference with [the effective date] of 2015,” said conference chairman Tariq Al Awadhi of the United Arab Emirates. ITU-R studies of compatibility between the mobile and other services will be done in the interim “in order to have [the] allocation finally in WRC 2015,” he said. The allocations are subject to “various provisions” agreed during the conference, an official said.

Toure highlighted the achievement of “allocating spectrum resources for mobile broadband and for addressing the digital dividend issue which ‘now provides for a great deal of global harmonization of the use of the 700 MHz band for all regions by the services which most need it,’” a press release said.

Opposition at the beginning of the conference was “very strong,” said Francois Rancy, director of the Radiocommunication Bureau. ITU region 1 has four groups, he said referring to Africa, the Middle East, Europe and the ex-USSR countries in the Regional Commonwealth in the Field of Communications. Discussions at an early stage were put on track “in a positive spirit,” he said.

Conference action was required for administrations with broadcasting services and “to plan ... in order to do some rearrangement for their frequencies for broadcasting to be ready by 2015,” Al Awadhi said. Those administrations that would like to use 700 MHz for mobile starting at the end of the 2015 conference will be able to, he said. They will be preparing for 2015 so that use of frequencies in ITU region 1 is harmonized, he said. The Americas and Asia-Pacific regions already have mobile services in the band, he said.

The conference “put everything on track for worldwide harmonization in three years,” Rancy said. Harmonized spectrum, especially in the 700 and 800 MHz bands will have “a much higher value” for governments, he said. The conference approach was thus for a harmonized rather than a footnote approach, he said.

“We want all countries to use the same frequency arrangement, the same standards, to get the benefits of worldwide harmonization,” Rancy said. The initial idea in the Arab and African proposals was to align the regions, he said. Conference participants became convinced it was much better to take advantage of the next three years to ensure the 700 and the 800 MHz band would be harmonized worldwide so that economies of scale for mobile broadband would be gained starting right after the 2015 conference, he said.

The historical “discrepancy” on use of the 700 and 800 MHz bands for mobile would be overcome by having the 2015 conference objective be a “harmonized situation throughout the world in the 700 and 800 MHz” bands, Rancy said. Incumbent TV broadcasting and aeronautical radionavigation are the “victims,” he said. “Sharing is possible,” he said. Once a primary mobile allocation is made, the decision between mobile and broadcasting in each of the 700 or 800 MHz bands, “is a national decision” unless there is a regional organization which can “enforce a common decision,” Rancy said referring to the European Union.

This will allow countries following expected decisions in 2015 to use “the mobile broadband service” with gear that will have the same qualities, relatively lower prices and the ability to go from one region to another, Rancy said. ITU-R work will “ensure that the frequency plans for the equipment are the same throughout the world” and that each region or sub-region doesn’t adopt a different way of doing things, he said.

“All the technical sharing problems” highlighted during the 2007 conference as possibly undermining the availability of the first digital dividend in the 800 MHz band in ITU region 1 have been resolved satisfactorily, Rancy said. There is now a “green light” for those countries that want to use the 800 MHz band for the mobile service, he said.

The decision for 2015 to address more mobile allocations was also a major achievement, Rancy said. ITU-R studies for the 2015 agenda item on more mobile spectrum will start with the mobile sector saying what it wants in terms of spectrum, he said.

The conference was a “great success,” Toure said. “A record number of youngsters” in all delegations are “bringing the new spirit” and technologies to the field of spectrum management, he said. — *Scott Billquist*

### Cable Only?

## **Dish Plug-and-Play Fight Resumes in D.C. Circuit**

Dish Network lacks the legal standing to force the FCC to pull back encoding rules for set-top boxes adopted in 2003 as part of plug-and-play device implementation, the FCC and Justice Department said in a filing with the U.S. Court of Appeals for the D.C. Circuit. The Dish appeal, filed in 2004, was paused as the agency considered DirecTV's petition for reconsideration of the plug-and-play order, which the commission denied in 2010. Dish argued in its brief last month that the agency's application of plug-and-play rules to all multichannel video programming distributors, rather than just cable, goes beyond the congressional intent.

The encoding rules in question limited MVPDs' digital copy protection of programming and prohibited the companies from using encoding to shut off a video output on a program-by-program basis and using a lower resolution for broadcast program. The rules were implemented as a result of a provision in the 1996 Telecom Act and were based on an industry-brokered agreement between the cable and consumer electronics industries. The government said Dish forfeited its rights to appeal because it never brought its principal argument of the appeal — that the FCC lacked statutory authority — to the commission. While the company did file an ex parte questioning the authority at the time, the “vague and equivocal statements” don't satisfy requirements of Section 405 of the Communications Act, said DOJ and the FCC.

Dish's arguments also lack merit, said the Thursday filing. The FCC had authority to impose encoding rules under the 1996 Act, which tasked the agency with ensuring availability of navigation devices. The rules were adopted to help ensure consumer confidence in digital TV equipment, as the DTV transition deadline had originally been set for 2006, said the government. All full-power TV stations went all-digital in 2009.

The agency had ancillary authority to make rules to fulfill the goal of Section 624A: “To ensure that cable subscribers will be able to enjoy the full benefits of available cable programming,” said the DOJ and FCC. While the statute doesn't directly apply to DBS, the FCC applied the rules to all MVPDs to avoid a market imbalance between cable and satellite, said the filing. The Supreme Court had said the FCC was able to regulate the cable industry because of its regulatory responsibilities for broadcasters,

even before the Communications Act was amended to include cable, said the agencies. The NCTA, which has been involved in the issue, didn't comment. Dish's reply is due March 16. — *Tim Warren*

### Mediacom 'Disadvantaged' in First

## FCC Plans for Second ISP Speed Test

The FCC plans a nationwide broadband speed test, following up on the limited tests it did last year which showed that customers at 13 of the largest ISPs were generally receiving performance at or exceeding advertised levels. Industry players have been meeting with the commission over the past several weeks to hammer out details of how the expanded tests will be done and what they'll measure, according to a series of ex parte filings. An agency source said that in addition to raw speed measurements, the new tests will include data on jitter, latency and variance.

In its first “Measuring Broadband America Report,” the commission worked with broadband measurement service SamKnows to take more than 100 million direct measurements of broadband performance from thousands of volunteers. The report (<http://xrl.us/bk3w33>) found that the 13 ISPs in the study were generally meeting or exceeding advertised speeds (CD Aug 3 p1). Now, the commission is proceeding to what some in the industry are calling “Phase II.” The FCC plans to expand the study into new regions of the country, and “publish more kinds of data” in two new reports this year, said a public notice Friday (<http://xrl.us/bmskj3>). “Performance information is only useful to consumers if it is accurate and up-to-date,” it said. “The FCC will continue its commitment to test and report broadband information transparently, and in collaboration with key stakeholders.”

Representatives from more than a dozen ISPs met earlier this month with commission staff to discuss how to recruit volunteer panelists, how to license report data to carriers in advance of the public release, and how to allow for academic and research review of the testing architecture, said an ex parte filing in docket 09-158 (<http://xrl.us/bmskkf>). A draft code of conduct presented at the meeting said the participants and stakeholders in the broadband testing program would agree to act in good faith, keep results confidential until the FCC releases the data, and ensure they don't do anything to “enhance, degrade, or tamper with the results of any test for any individual panelist or broadband provider.”

Level 3 discussed “the importance of end-to-end Internet metrics, given that poor performance of any link from the beginning of the transmission to the end can result in a poor consumer experience,” the company said about a separate FCC meeting (<http://xrl.us/bmskku>). Level 3 suggested the use of trace routing to identify links in the end-to-end transmission that cause performance issues. “Measurement standards should be agreed upon and implemented on an industry wide basis, as opposed to only involving certain providers or types of providers involved in Internet transmissions,” the Internet backbone company wrote.

Mediacom has concerns with the FCC’s methodology in earlier tests, the company reported it and NCTA told commission officials. “During the initial round of broadband speed testing by SamKnows last year, the testing methodology did not always account for significant differences between ISPs in terms of the relative distances between the various ISPs and the selected M-Lab measurement points,” Mediacom attorney Craig Gilley wrote in an ex parte filing (<http://xrl.us/bmskmr>). “Measuring results using a limited number of servers located in metropolitan areas disadvantaged providers such as Mediacom who do not have their own networks serving such locations.”

Mediacom did not fare as well as some of the other ISPs in last year's broadband test. Although its average sustained download speeds were frequently over 90 percent of its advertised speed, during evening peak hours its speed dropped to around 75 percent. The "small size of the test sample," overemphasized the "anomalous results of just a few geographically remote users," Gilley wrote. Mediacom proposed the possibility of deploying additional measuring servers, at its own cost, at one or more of its "significant peering locations." — *Matthew S. Schwartz*

**'Not Sufficient'**

## **WRC Agreed to Measures Aimed at Easing Satellite Congestion and Spurring Access**

GENEVA — ITU member governments made gains in clarifying the rules for bringing into use satellite network frequency assignments and set up a process of inquiries about the movement of satellites, sources said on the last day of the four-week World Radiocommunication Conference (WRC). Reducing the orbital arc used for determining the coordination requirements of satellite networks is one way to ease difficulties, but is "not sufficient by itself," said Francois Rancy, director of the Radiocommunication Bureau, during a press conference.

The conference addressed a complicated array of satellite issues, officials said. The difficulty in managing access to orbits and associated spectrum is related to heavy demand, limited resources, and the ability, in the name of flexibility, to keep part of the resource unused for a certain amount of time, Rancy said.

Administrations and operators have "unfortunately" extensively used suspension of a satellite network to keep "orbital slots they are not using," Rancy said. The major conference decision on the matter was to "take steps to prevent this type of abuse," he said. The difficulty to coordinate with other systems is one of the symptoms of the abuse, he said.

The conference clarified "the notion of bringing into use of satellite network frequency assignments as a satellite is deployed and maintained at the notified orbital position for a continuous period of ninety days," an ITU press release said. The conference mandated the Radiocommunication Bureau with initiating inquiries to administrations to provide information on the movement of satellites, it said.

Improved due diligence information, including more detailed information on the identity of the spacecraft used for the operation of the frequency assignments was also agreed to foster the long-term access and development of the broadcasting satellite service in the 21.4 to 22 GHz band in ITU regions 1 and 3, the press release said. WRC-12 improved satellite coordination by reducing the coordination arc in parts of the most congested spectrum and agreed to look into the possibility of further reductions, it said.

One way of easing the difficulty in coordination for and spurring access to orbital slots is to say that outside a certain orbital arc of about 10 degrees in the Ku-band, "you don't have to coordinate," Rancy said. It means it's easier to get in, he said. If 30 countries have rights in the 10 degrees, there's still a problem, he said. The reduction of the responsibility to coordinate is one way to spur access for new systems, he said. "It's certainly not sufficient by itself," he said.

The conference included new provisions in the Radio Regulations to improve satellite detection of automatic information systems using VHF channels, the press release said. It also decided that notifying administrations of mobile satellite service networks shall accommodate spectrum needed for distress, urgency and safety communications of the Global Maritime Distress and Safety System and for aeronautical mobile-satellite (route) service communications, it said. — *Scott Billquist*

## Earth Observation

### **WRC Decisions Said to Spur Climate Change Monitoring, Will Affect Other Spectrum Uses**

GENEVA — World Radiocommunication Conference (WRC) decisions will safeguard spectrum needed to observe and understand the Earth, atmosphere and oceans and to reduce the risk of weather, climate and water-related disasters, the World Meteorological Organization said in a press release following the four-week conference. The growing importance of collecting and exchanging Earth observation data was an important issue before the conference, said Hamadoun Toure, ITU secretary-general, at a press conference. Toure was referring to boosting the accuracy of weather forecasting, climate change monitoring, disaster prediction and mitigation, and gains in other areas.

The conference updated spectrum use for future Earth observation applications using passive sensors flying on meteorological and environmental satellites to monitor water vapor and oxygen spectral lines, an ITU press release said. They're needed for ice cloud and precipitation measurements and for storm monitoring and climate studies, it said.

A revised resolution calls for the continued recognition that spectrum used by Earth observation applications has a considerable societal and economic value, the WMO said. The resolution urges administrations to take into account Earth observation radio-frequency requirements, in particular, protection for spectrum used by Earth observation systems, it said. It also encourages administrations to consider spectrum vital for Earth observation applications before making decisions that would negatively impact the operation of the applications, it said.

The WRC agreed to no change to the Radio Regulations after considering the worldwide regional harmonization of spectrum for electronic newsgathering, the WMO said. This avoids increasing interference to meteorological applications from the introduction of electronic newsgathering tuning ranges, it said.

The conference updated the Radio Regulations to include reference to the passive bands within the 275-3000 GHz range to ensure “those bands used in WMO activities” are taken into consideration for use by free space optical links, it said. The conference, in a review of fixed service use in bands between 71 and 238 GHz, decided to include recommended limits for active services sharing or using adjacent bands to protect passive service, it said.

The WRC agreed to make allocations for oceanographic radars in sets of bands for use in a uniform way while ensuring they don't interfere with fixed and mobile services, the WMO said. The compromise solution, which doesn't include primary allocations, will help further development and use of oceanographic radars, it said.

The conference also agreed to the allocation of frequencies at 8.3 and 11.3 kHz to meteorological aids for use in lightening detection systems, it said. The conference recognized that no changes were needed to the Radio Regulation to support software defined radio or cognitive radio systems, WMO said. The WRC noted the incompatibility of cognitive systems with passive radio frequencies, which should be taken into account in ITU-R studies, it said.

A footnote on use of frequencies in the range of 5850 to 7075 MHz was added to the Radio Regulations for high altitude platform stations' gateway links, the WMO said. Australia and a few African countries included themselves in the footnote, it said. The aim is to reduce the risk of interference with Earth exploration satellite service activities, it said. The conference agreed to no change regarding an examination of the effects of emissions from short range devices, it said. It agreed to an extension of the allocation to meteorological satellite service in the band 7750 to 7850 MHz to the band 7850 to 7900 MHz, it said.

The WRC instructed ITU-R to continue studying aspects of radiocommunications and information and communications technology relevant to early warning, disaster mitigation and relief operations, the ITU press release said. It encourages administrations to consider using identified frequency bands when undertaking their national planning for the purposes of achieving regionally harmonized frequency bands or ranges for advanced public protection and disaster relief solution, it said. — *Scott Billquist*

## Comm Daily® Notebook

The Communications Workers of America backed a request by public interest groups asking that the FCC require Verizon and various cable companies to file unredacted copies of various marketing agreements tied to the sale of AWS licenses from cable consortium SpectrumCo and Cox to Verizon Wireless (CD Feb 8 p1). "Consumers have the right to expect increasingly robust choices for video, wireless and broadband services," CWA said in a filing at the FCC (<http://xrl.us/bmsku3>). "Cross-platform competition for such services results in higher infrastructure investment, job growth, and lower prices for consumers." The agreements could "limit the availability of competitive services, dividing up geographic areas for particular companies," CWA said. "Such a result would lead to reduced investment in infrastructure, job losses, and higher prices for consumers."

The FCC extended the comment deadline to March 16 on census block eligibility challenges for Mobility Fund Phase I support (<http://xrl.us/bmskv8>). "Given the issues involved in identifying potentially eligible census blocks, from among the more than 11 million census blocks covering the United States and the Territories, based on the availability of 3G or better mobile services, and in light of our recent release of an updated list of potentially eligible blocks based on January 2012 American Roamer data, we believe it serves the public interest for the Commission to allow additional time to develop a comprehensive public record on these issues," the notice said. The original deadline was Feb. 24, but the Rural Telecommunications Group and the Blooston Rural Carriers sought a 21-day extension last week. RTG said it "questions the accuracy and reliability of the American Roamer data" and said it needed additional time to "fully investigate the data and tools released by the Commission." Others, such as the Alaska Rural Coalition and the National Telecommunications Cooperative Association, supported the requests. Reply comments will be due March 26; deadline for comments on all other issues raised in the Auction 901 public notice remains Feb. 24. Also Friday, RTG filed reply comments in the

Mobility Fund Phase II proceeding, arguing that any decision prior to completion of Phase I on how to award Phase II support would be “premature” (<http://xrl.us/bmsk3h>). RTG urged the FCC to institute an examination period of no less than six months before making a decision on Phase II support. “An examination period will allow the Commission to address the inaccuracies of the American Roamer data and the centroid method of determining whether an area is eligible or not eligible for Phase II support,” said RTG General Counsel Carri Bennet.

## Capitol Hill

An Obama administration official Friday dismissed calls to delay consideration of S-2105, the Cybersecurity Act. “It is our sincere hope that Senators will look at the significant amount of public debate that has been occurring on these issues and continue to work in a bipartisan manner to craft legislation to address the full range of cyber threats facing our nation,” the official told us. “Resorting to half measures is simply not commensurate with the very real and urgent risks to our nation. It’s time for the Senate to get down to business on a vital national security matter.” Sen. John McCain, R-Ariz., chastised the authors of S-2105 for their “hurried process” during a Senate Homeland Security and Governmental Affairs Committee hearing Thursday. The Cybersecurity Act “has already been placed on the calendar by the Majority Leader, without a single markup or any executive business meeting by any committee of relevant jurisdiction,” McCain said. “My friends, that’s wrong.” The administration official told us Senate committees have worked on and debated the proposal for at least four years. “Since the Administration delivered its cybersecurity legislative proposal last May, executive branch leaders have testified at 15 congressional hearings and provided dozens of briefings to members of congress and their staffs. We provided representatives to participate in dozens of bipartisan working group meetings to develop consensus provisions that incorporate elements from the Administration’s legislative proposals as well as previous Senate proposals. ... How many more business meetings are necessary to begin debate?”

## Wireline

The FCC Wireline Bureau seeks comment on InComm Solutions’ request for review of a decision by the Universal Service Administrative Company to deny a request for credit, according to a public notice released Friday (<http://xrl.us/bmsk2a>). InComm requested reversal of the decision, which denied its request for credit against its universal service obligation for the contributions made by its underlying carrier based on revenue received from Oct. 2008 through June 2011. Comments are due March 19; replies April 3. The bureau also seeks comment on a request for review filed by Steelville (Mo.) Telephone Exchange, in which USAC denied its appeal of audit findings leading USAC to request recovery for universal service support overpayments (<http://xrl.us/bmsk34>).

The FCC Wireline Bureau seeks comment on Verizon’s proposed waiver of the new phantom traffic rules adopted in the Universal Service Fund/Intercarrier Compensation Transformation Order, according to a public notice released Thursday (<http://xrl.us/bmskzy>). In its petition, Verizon requested the waiver so it could “complete its compliance assessment, develop remediation plans, and seek further waivers as appropriate.” Verizon also requested a limited waiver of the phantom traffic rules with respect to certain signaling system 7 network elements, multi-frequency signaling equipment, and originating/intermediate carrier IP traffic exchanges. Comments are due March 19; replies April 3.

## Wireless

The state of Tennessee asked for a waiver from the FCC so it can build out an early public safety network in the 700 MHz band. "The State currently is implementing a statewide public safety Project 25 standard based interoperable radio system in conjunction with the Tennessee Valley Regional Communications System," the state said in a filing at the commission (<http://xrl.us/bmsktd>). "Tennessee would like to leverage and extend its experience, established governance model, antenna sites and other resources to add broadband Long Term Evolution (LTE) capabilities and deploy a system capable of providing next generation mobile data services for first responders across the State of Tennessee." More than 30 jurisdictions have waiver requests pending at the agency. FCC Chairman Julius Genachowski was asked during a House Communications Subcommittee hearing Thursday about the pace in considering the waivers (CD Feb 17 p3). The state of Massachusetts is also considering seeking a waiver so it can build out a public safety network, according to a filing last week (<http://xrl.us/bmsktm>).

The passage of the spectrum legislation is one of the four tower sector "catalysts" for 2012, said analyst Jonathan Schildkraut of Evercore. Others are the continuation of data growth, a potential Amazon smartphone and tower spending by the four biggest national carriers and Clearwire, he said. Among the major tower companies, Crown Castle is the biggest potential beneficiary from spectrum legislation, he said. The construction of a public safety network would be targeted toward urban markets, he said, noting Crown Castle is "over-indexed to these major markets." The approval is negative for Clearwire given the increased likelihood of new spectrum introduction, the analyst said.

Leap Wireless narrowed its Q4 loss to \$84.4 million from \$249 million in Q4 2010. The carrier added 179,000 net new customers during the quarter, up from 107,000 net additions it posted in the year-ago quarter. The figure includes 209,000 net new voice customers and the loss of 30,000 broadband customers. The company remains on track with its LTE network rollout, expecting to cover 25 million people by the end of the year, it said.

The FTC will involve itself with mobile privacy and security even more this year, said Jessica Rich, FTC financial practices division director, at a Privacy in 2012 panel Thursday. She said the FTC has been more involved recently, referring specifically to a report issued Thursday about how mobile app data practices affect children (WID Feb 16 p5). The FCC's goals for mobile security are aligned with the FTC's, said Jennifer Tatel of the FCC. She said privacy concerns among customers can hinder broadband deployment, so the FCC wants to crack down on potential privacy issues. The CTIA is concerned with mobile and app security because the group foresees more innovation, bringing more risks as well as opportunities, said CTIA Senior Vice President Michael Altschul.

Verizon executives spoke with FCC officials this week about the commission's new rule phasing out universal service high-cost support to competitive eligible telecom carriers, and how that rule would be applied to Verizon Wireless in light of Verizon's pre-existing Alltel merger commitment to phase out its CETC support over five years, according to an ex parte filing released Friday (<http://xrl.us/bmskyr>). At a minimum, they said, Verizon Wireless should receive high-cost support sufficient to meet its ETC obligations in 2012.

## Internet

Websites operated by the FTC were hacked Friday. The Business Center website of the commission's Consumer Protection Bureau, [www.business.ftc.gov](http://www.business.ftc.gov), and the National Consumer Protection Week

site, [www.NCPW.gov](http://www.NCPW.gov), were disrupted, the FTC said on its Facebook page. The commission "takes these malicious acts seriously," a spokeswoman said in a statement. "The sites have been taken down and will be brought back up when we're satisfied that any vulnerability has been addressed." The hacker collective Anonymous claimed responsibility for the attack on their Twitter page, as it has for other denial-of-service attacks on U.S. government websites.

## State Telecom Activities

The New York State Public Service Commission is considering a \$400,000 penalty against Verizon for failing to comply with the commission's timeliness-of-repair metrics (a wireline service quality standard) during October and December 2011, the agency said. Verizon has until March 8 to submit its explanation, legal analysis and all evidence on why the commission shouldn't pursue a penalty action. Verizon is pleased that the commission acknowledged the negative impact of Tropical Storms Irene and Lee had on the telco's ability to meet certain service quality standards, a Verizon spokesman said. But the company's disappointed that the agency didn't acknowledge the impact of the storms on infrastructure in certain upstate communities which caused Verizon to miss performance standards, he said. Verizon will review the commission's order and respond accordingly, he said. — YW

The Vermont Public Service Board approved a plan that will redirect the penalty assessments on FairPoint into broadband expansion in the state, the agency said. Under the agreement, FairPoint will invest up to \$7 million to expand its broadband network in the state. The VPSB had proposed penalties on FairPoint due to service issues resulting from the operator's acquisition of Verizon's New England lines in 2008. FairPoint will work with the Vermont Department of Public Service and Vermont Telecom Authority to determine areas for expansion. The work is scheduled to be completed by 2013.

The California Public Utilities Commission approved seven California Advanced Services Fund (CASF) Rural and Urban Regional Broadband Consortia grants totaling about \$1 million, the agency said. The program now has a total of 14 consortia groups working on broadband deployment, access and adoption in unserved and underserved areas.

## Broadcast

The FCC began an audit of broadcaster equal employment opportunity rule compliance, randomly picking radio and TV stations who must give the agency by March 27 EEO public-file reports and other information. Cox Radio, Entercom, Iowa State University, San Mateo Community College in California and Saga Communications are among those whose stations got audit letters. Each year, the commission randomly audits for EEO compliance 5 percent of pay-TV systems and radio and TV stations, a public notice said Friday (<http://xrl.us/bmskky>).

## Cable

The Tennis Channel said the FCC shouldn't let Comcast file more comments supporting the cable operator's request for the commission to stay (CD Feb 14 p21) an administrative law judge's initial deci-

sion granting the independent network's program carriage complaint. The agency's rules "disfavor replies, expressly stating that replies to oppositions to stay requests 'should not be filed and will not be considered,'" the indie said. "That rule is especially applicable where the proposed reply merely seeks to reargue issues that Comcast already raised and discussed." If the defendant in *Tennis Channel v. Comcast* can make another filing, the plaintiff said it also wants to make one, which it included in a filing posted Thursday in docket 10-204 (<http://xrl.us/bmskgw>).

The debate about how much pay-TV affiliate fees will increase each year seems to be resolved at around the 8 to 9 percent range, Nomura analysts Mike McCormack and Mike Liddell wrote in a note to investors. Based on Nomura's estimates and the guidance from both pay-TV distributors and programmers this quarter, "the trend is not expected to soften through the investable horizon," they wrote. But distributors may be able to afford the higher programming rights, they said. "With capital intensity declining, we see strategic value in securing enhanced rights to differentiate video and accentuate the broadband products," they wrote. "Even if video gross margins are in decline, there is value in selling an incremental broadband subscription, or a higher-speed tier," which contribute much higher margin with low capital intensity, they said. But that scenario only benefits ISPs, they said. "Similar to the HD channel advantage that DBS providers had in the mid-2000s, bundled providers are advantaged today, and everyone will likely have to pay," they said.

Time Warner Cable wants out of rate regulation in three communities in New York and Pennsylvania, because it faces effective competition there from the two major U.S. DBS companies, and more than 15 percent of video customers in the communities buy video from TWC rivals. The petition for special relief which included Greece, N.Y., was posted Thursday to docket 12-43 (<http://xrl.us/bmskfx>).

## Communications Personals

**Gina Bianchini**, Mighty Software, joins Scripps Networks Interactive board ... Lobbyist Registrations: Sony, **Brownstein Hyatt**, effective Jan. 1 ... TVG Network, **Clark Lytle**, effective Feb. 13.

## Communications Daily Calendar

- Feb. 21      Broadband Breakfast panel on cybersecurity legislation, 8 a.m., Clyde's Gallery Place, Washington — 646-262-4630
- Feb. 21      FCBA Engineering & Technical Committee brown bag on federal advisory committees, 12:15 p.m., T-Mobile, 601 Pennsylvania Ave. NW, Washington — [steve.sharkey@t-mobile.com](mailto:steve.sharkey@t-mobile.com)
- Feb. 21      FCBA Young Lawyers Committee brown bag on First Amendment, 12:15 p.m., Holland & Knight, 2099 Pennsylvania Ave. NW, Washington — [drew.shenkman@hklaw.com](mailto:drew.shenkman@hklaw.com)
- \*Feb. 22      Hudson Institute discussion on spectrum policy, noon, 1015 15th St. NW, Washington — [events@hudson.org](mailto:events@hudson.org)

- Feb. 23 Information Technology & Innovation Foundation program with ex-FCC Chief of Staff Eddie Lazarus, 10 a.m., 1101 K St. NW, Washington — mail@itif.org
- Feb. 24 FCC Consumer Advisory Committee meeting, 9 a.m., FCC Room TW-C305 — 202-428-2809
- Feb. 24 National Public Safety Telecom Council meeting, 8:30 a.m., Room S226, Las Vegas Convention Center — support@npstc.org
- Feb. 28 FCBA Enforcement Committee brown bag on Meet the Enforcement Bureau, noon, Hogan Lovells, 555 13th St. NW., Washington — www.fcba.org
- Feb. 28 Institute for Policy Innovation communications reception, 5:30 p.m., U.S. Capitol — 972-874-5139
- Feb. 29 IPI Communications Summit, 9 a.m., Reserve Officers Association, 1 Constitution Ave. NE, Washington — erin@ipi.org
- March 1 FCBA Intellectual Property Committee CLE on Internet TV, 6 p.m., Covington & Burling, 1201 Pennsylvania Ave. NW, Washington — www.fcba.org
- \*March 5 FTC Chairman Jon Leibowitz and Commissioner Thomas Rosch testify at House Appropriations Subcommittee hearing on FTC budget, 3 p.m., Room 2359 Rayburn, 202-225-7245
- March 5-7 ITU Connect Arab Summit, Doha, Qatar — <http://xrl.us/bmhajg>
- March 7 FCBA Engineering Committee brown bag on TV white spaces, 12:15 p.m., NAB, Washington — sgoodwin@nab.org
- March 7 Cable Europe policy lunch, 12:45 p.m., Square-Brussels Meeting Centre — [jessica.fernandez@cable-europe.eu](mailto:jessica.fernandez@cable-europe.eu)
- March 12-14 Wireless Innovation Forum working meeting, Holiday Inn San Diego — [www.WirelessInnovation.org](http://www.WirelessInnovation.org)
- March 12-15 Satellite 2012 Conference, Washington Convention Center — [lfuller@accessintel.com](mailto:lfuller@accessintel.com)
- March 13 FCC New England region Public Safety Planning Committee, 2 p.m., Kennebunkport, Maine, Fire Department — 860-685-8157
- March 13-15 American Cable Association annual summit, Grand Hyatt, Washington — [www.acasummit.org](http://www.acasummit.org)
- March 14 FCC Advisory Committee on Communications Diversity, 2 p.m., FCC meeting room TW-C305 — 202-418-1605

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\* Item is new or revised since last week.